

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

<p>IN RE:</p> <p>IOWA TELECOMMUNICATIONS ASSOCIATION, DUMONT TELEPHONE COMPANY, FOREST CITY TELECOM, INC., GRAND RIVER MUTUAL TELEPHONE CORPORATION, MUTUAL TELEPHONE COMPANY, NORTHERN IOWA TELEPHONE COMPANY, SOUTH CENTRAL COMMUNICATIONS, INC., UNIVERSAL COMMUNICATIONS OF ALLISON, WEBB-DICKENS TELEPHONE CORPORATION, AND WINNEBAGO COOPERATIVE TELEPHONE ASSOCIATION,</p> <p style="text-align:right">Petitioners,</p> <p style="text-align:center">vs.</p> <p>VERIZON WIRELESS, SPRINT PCS, and U.S. CELLULAR CORPORATION,</p> <p style="text-align:right">Respondents.</p>	<p style="text-align:right">DOCKET NO. ARB-04-3 (SPU-00-7)</p>
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ORDER DENYING REHEARING

(Issued January 6, 2005)

On September 1, 2004, the Iowa Telecommunications Association, Dumont Telephone Company, Forest City Telecom, Inc., Grand River Mutual Telephone Corporation, Mutual Telephone Company, Northern Iowa Telephone Company, South Central Communications, Inc., Universal Communications of Allison, Webb-Dickens Telephone Corporation, and Winnebago Cooperative Telephone Association

(collectively, Petitioners) filed a "Petition for Enforcement of Board Order, for Arbitration, and for Complaint" (the Petition) with the Utilities Board (Board). The Petition was amended on September 2, 2004.

Some of the Petitioners were parties to an earlier Board docket, *Re: Exchange of Transit Traffic*, Docket No. SPU-00-7 (the *Transit Traffic* docket), which involved issues relating to the exchange of telecommunications traffic between wireless and wireline carriers in Iowa. In that docket, Petitioners state the Board (among other things) directed the parties to negotiate one or more interconnection agreements for the exchange of the traffic at issue. Petitioners state that they have negotiated interconnection agreements with Verizon Wireless, Sprint PCS, and U.S. Cellular Corporation (the Respondents).

In their negotiations the parties "agreed to reserve the issue of past compensation until after an agreement on interconnection and transfer of traffic had been reached."¹ The parties have now negotiated all interconnection issues except the compensation for the termination of wireless traffic from April 1999 to May 1, 2004.² In this docket, Petitioners asked the Board to resolve that issue.

Petitioners asserted a variety of possible jurisdictional bases for their Petition, including arbitration pursuant to 47 U.S.C. § 252 and 199 IAC 38.7(3), a standard complaint proceeding (presumably pursuant to Iowa Code § 476.3 (2003), although that statute is not specified in the Petition), and a petition for enforcement of the

¹ Petition, ¶7.

² Petition, ¶8.

Board's prior orders in the *Transit Traffic* docket, along with theories of quantum meruit and implied contract.

The Board ordered Respondents to file their answers to the Petition on or before September 15, 2004. In addition, the Board directed the Respondents to indicate whether they believed the proceeding to be an arbitration proceeding pursuant to section 252. The Board also directed the Petitioners to file a reply to the answers on or before September 22, 2004.

On September 15, 2004, the Respondents each filed separate answers to the Petition and responded to the Board's questions regarding this proceeding. In addition, each of the three respondents urged the Board to dismiss the Petition.

After reviewing the petition and all subsequent filings, the Board granted the motions to dismiss filed by the Respondents.³

On December 9, 2004, Petitioners filed an application for rehearing, asking the Board to grant rehearing for the purpose of reconsideration of the "Order Granting Motion to Dismiss" issued November 19, 2004. USCC and Verizon filed responses to the application for rehearing on December 23, 2004. A statement adopting the response of Verizon was filed by Sprint on December 29, 2004.

The Petitioners agree with the Board's statement at page 7 of its November 19, 2004, order dismissing the petition, which states:

What the Petitioners have asked the Board to do is to require that the terms of that interconnection agreement be

³ See, Order Granting Motions to Dismiss, Docket No. ARB-04-3, Issued November 19, 2004.

applied retrospectively to all similar traffic exchanged between the parties from and after April 19, 1999.⁴

The Petitioners describe the scope of the desired inquiry as follows: "[T]he proceeding here would be to determine the imbalance of traffic, the applicable minutes of use and the specific facts which demonstrate the amount owed for past traffic under the contract."⁵ However, the Petitioners do not provide any additional argument or citation that would alter the Board's prior determination that the issue is not properly before it pursuant to 47 U.S.C. § 252.

As the Board previously noted at pages 6 and 7 of its Order dismissing the petition:

The Federal Communications Commission (FCC) has given guidance on what should be considered an interconnection agreement pursuant to section 252 (and thus subject to arbitration under that section) of the Act, stating:

[W]e find that an agreement that creates an *ongoing* obligation pertaining to resale, number portability, dialing parity, access to rights-of-way, reciprocal compensation, interconnection, unbundled network elements, or collocation is an interconnection agreement that must be filed pursuant to section 252(a)(1).⁶

The FCC declined to require that all agreements entered into as "settlements of disputes" be filed.⁷ The only issue that has been brought to the Board is clearly related to the settlement of the dispute surrounding compensation for previous services and, therefore, is not part of the interconnection agreements that have already been filed and

⁴ Application for Rehearing, p. 3.

⁵ Application for Rehearing, p. 4.

⁶ *In the Matter of Qwest Communications International Inc. Petition for Declaratory Ruling on the Scope and the Duty to File and Obtain Prior Approval of Negotiated Contractual Arrangements under Section 252(a)(1)*, WC Docket No. 02-89, Memorandum Opinion and Order, ¶8.

⁷ *Id.* at footnote 26 and ¶12.

approved that define an ongoing obligation. What the Petitioners have asked the Board to do is to require that the terms of that interconnection agreement be applied retrospectively to all similar traffic exchanged between the parties from and after April 19, 1999.

The Petitioners have offered no argument that would alter the Board's determination that the petition for arbitration was properly dismissed. Arbitration under Federal Act is for determination of the terms and conditions of interconnection agreements that will have future application. It is not for resolving disputes regarding past events.

IT IS THEREFORE ORDERED:

The application for rehearing filed by Petitioners on December 9, 2004, is denied.

UTILITIES BOARD

/s/ Diane Munns

/s/ Mark O. Lambert

ATTEST:

/s/ Judi K. Cooper
Executive Secretary

/s/ Elliott Smith

Dated at Des Moines, Iowa, this 6th day of January, 2005.